

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 4896 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MAGANBHAI SHAMJIBHAI SOLANKI (ROHIT) - Petitioner(s)
Versus
GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD., & 2
- Respondent(s)

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Appearance :

MR YATIN SONI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 22/02/2007

ORAL JUDGMENT

Heard the learned advocate Mr. Yatin Soni on
behalf of the petitioner.

In the present petition, petitioner has challenged the order dated 12/2/2007 passed by Deputy Executive Engineer of respondent Corporation.

The brief facts of the present petition are as under :

The petitioner belongs to Scheduled Caste (Chamar community). The petitioner was appointed as a Junior Clerk in the office of respondent no. 1 in the year of 1982. At that occasion petitioner had submitted School Leaving Certificate issued by the Head Master, the Jubilee Institute, Sundalpura, Taluka Anand on 12/7/1978 in which petitioner's birth date was mentioned as 14/2/1949. Petitioner having one another document of birth date from Births and Deaths Register of Village Sundalpura, Taluka Anand, where birth date of the petitioner is 9/2/1950. After getting job in the respondent no. 1 corporation, initially, the petitioner has submitted one affidavit of his cousin brother Rohit Mithabhi Manabhai about the correct birth date of the present petitioner where birth date of petitioner was mentioned as 9/2/1950. The said affidavit was sworn on 19/11/1979, before his appointment in the office of respondent no.1 corporation. The said affidavit has been returned back by the officer of the corporation on the ground that on the basis of affidavit, service record can not be changed. Therefore, according to the petitioner, many efforts were made by the petitioner to correct the birth date

in service record , but he was not able to correct the same. Thereafter, no steps have been taken by the petitioner, but ultimately, he received notice from the respondent to retired from the service on 28/2/2007. Therefore, he approached to this Court by way of SCA no. 23295 of 2006 wherein this Court has directed to otherside to decide the representation and pass appropriate reasoned order in accordance with law.

According to the petitioner, on 2/1/2007 respondent no. 2 visited office of the Manlatdar, to find out the correct date of birth from the register of Births and Deaths Register wherein respondent found true birth date i.e. on 9/2/1950, but respondent no. 2 submitted that he has reported to higher authorities. Thereafter, petitioner received letter dated 31/1/2007 that request made by petitioner can not accepted as per G.C.S.R. Parichay 1/2003 and Condition no. 10.3. Therefore, present petition is filed by the petitioner.

Learned advocate Mr. Soni relied upon the decision of this Court in case of S.K. Simpi Vs. State of Gujarat reported in 1999 (3) GLR page 2743, where he relied upon that head note 'B' which is quoted as under :

“Delay – Petitioner making such application for change in date of birth from 1936 to 1938 in 1990 - Delay held to be on the

part of the petitioner but he can not be driven out of service on this ground – Technicality of delay can not override the justice when the petitioner has good case on merits.”

Learned advocate Mr. Soni submitted that decision which has been taken by the respondent is contrary on the Birth and Death Register where birth date of the petitioner recorded as 9/2/1950.

I have considered the submissions made by learned advocate Mr. Soni and also considered the decision which has been relied by learned advocate Mr. Soni and decision which has been taken by the respondent on 12/2/2007.

The Apex Court in case of State of Tamil Nadu Vs. TV Venugopal reported in 1994 (6) SCC page 302 and State of Orrissa Vs. Ramnath Patnayak, reported in 1997 (5) SCC page 181 and in case of The Secretary & Commissioner Home Department & Ors. Vs. R. Kirubakaran reported in JT 1993 (5) SC page 404 held as under :

“When the entry was made in the service record and when employee was in service, he did not make any attempt to have service record corrected any amount of evidence produced subsequently is of no consequences.”

These aforesaid three decision of Apex Court has

been recently considered by the Apex Court in case of State of Gujarat and Ors Vs. Valimohmed Doshabhi Sindhi reported in 2006 (6) SCC Page 537. The Apex Court has observed in para 8, 9, 10 and 11 which are quoted as under :

"8. It is to be noted that there are several rules governing request to change the date of birth. One of them is Rule 171 of the Bombay Civil Services Rules, 1959 (in short "the Rules"). This Rule clearly provides that the request made for alteration of date of birth should not be entertained after the preparation of the service book of the government servant and in any event not after the completion of the probation period or after 5 years of continuous service, whichever was earlier. The said Rule categorically provides that once an entry of age or date of birth has been made in the service book, no alteration of the entry afterwards should be allowed unless it is shown that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error.

9. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation

or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or by even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

10. Most of the States have framed statutory rules or in the absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be

entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In state of Assam Vs. Daksha Prasad Deka this Court said that the date of the compulsory retirement : (SCC pp. 625-26, para 4)

"must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

In Govt. of A.P. V. M. Hayagreev Sarma the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules 1984 were considered. The Public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the

Rules framed by the State Government referred to above. It was inter alia observed by this Court (SCC p. 685, para- 7)

7. The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the Rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

11. In Executive Engineer Vs. Rangadhar Malik Rule 65 of the Orissa General Finance Rules was examined which provides that representation made for correction of date of birth nearabout the time of superannuation shall not be entertained. The respondent in that case was appointed on 16/11/1968. On 9/9/1986, for the first time he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set

aside the order of the Tribunal saying that the claim of the respondent that his date of birth was 27/11/1938 instead of 27/11/1928 should not have been accepted on the basis of the documents produced in support of the said claim because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as 27/11/1928. The said respondent did not take any step nor made any representation for correcting his date of birth till 9/9/1986. In Union of India V. Harman Singh, the position in law was again reiterated and it was observed: (SCC p. 167, para 7)"

"A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay."

In view of the above observations made by Apex Court in aforesaid cases and considering the facts that date of birth recorded in service book of petitioner before the respondent, no attempt has been made by the petitioner during the tenure of service about more than twenty five years, he remained silent. Thereafter, at the stage of retirement, efforts have been made by the petitioner rightly not entertained by the respondent authority, respondent has not committed any error which would require interference by this Court under Art. 226 of the Constitution of India.

Accordingly, there is no substance in the present petition. Present petition is dismissed.

(H.K.RATHOD, J)

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